# Supreme Court of the United States.

OCTOBER TERM, 1896.

THE UNITED STATES,
Appellant,

vs.

ALEXANDER MURPHY & CO.

## STATEMENT.

On August 29th, 1894, the appellees imported at the Port of New York and entered for consumption certain worsted dress goods (Rec., fols. 25, 26). The Collector assessed upon them a duty of 12 cents per square yard and fifty per cent. *ad valorem*, under paragraph 395, Schedule K of the Tariff Act of October 1, 1890 (fol. 26). The appellees, protesting, claimed them to be dutiable under paragraph 283, Schedule K, Tariff Act of August 28th, 1894 (fol. 29). The Board of Appraisers found (fol. 33):

"(2) That said merchandise consists of fabrics commercially known as women's and children's dress goods, composed of worsted weighing less than four ounces to the square yard."

They held the Collector's classification to be correct by virtue of the construction they put upon paragraph 297, Schedule K, of the Tariff Act of 1894 (fols. 32–43). The Circuit Court reversed their decision (Opinion, fols. 64–77). The Court of Appeals affirmed the

Circuit Court decision (Opinion, fols. 36–39). The case was brought here by writ of *certiorari*.

Women's and children's dress goods composed of worsted have been provided for in every general tariff act from 1864 to 1897. See

Act June 30, 1864, 13 U. S. Stat. at Large, 202, Sec. 5.
Act Mch. 2, 1867, 14 U. S. Stat. at Large, 559, Sec. 2.
Revised Statutes, Sec. 2504, Sch. L.
Act March 3, 1883, 22 U. S. Stat. at Large, 488, Sch. K.
Act Oct. 1, 1890, 26 U. S. Stat. at Large, 567, Sch. K., par. 395
Act Aug. 28, 1894, 28 U. S. Stat. at Large, 509, Sch. K., par. 283.
Act July 24, 1897, 30 U. S. Stat. at Large, 161, Sch. K., par. 369.

## Statutes Construed.

The following are the provisions of law construed in the decisions under review :

Act of October 1st, 1890, par. 395 :

> " On women's and children's dress goods, coat linings, Italian cloth, bunting, and goods of similar description and character, composed wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals, and not specially provided for in this act, the duty shall be twelve cents per square yard ; and in addition thereto fifty per centum *ad valorem*.
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> "*(b)* Provided, That on all such goods weighing over four ounces per square yard the duty per pound shall be four times the duty imposed by this act on a pound of unwashed wool of the first class, and in addition thereto fifty per centum *ad valorem*."

Act of August 28th, 1894, par. 283 :

> " On women's and children's dress goods, coat linings, Italians cloth, bunting, or goods of simi-

lar description or character, and on all manufactures, composed wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals, including such as have India rubber as a component material and not specially provided for in this Act, valued at not over fifty cents per pound, forty per centum *ad valorem ;* valued at more than fifty cents per pound, fifty per centum *ad valorem.*"

Act of May 9th, 1890 (26 U. S. Stat. at Large, p. 205) :

> " That the Secretary of the Treasury be, and he hereby is, authorized and directed to classify as woolen cloths, all imports of worsted cloths, whether known under the name of worsted cloth or under the names of worsteds, or diagonals, or otherwise."

In the case of U. S. vs. Field, 34 U. S. App., 452, the Circuit Court of Appeals for the Seventh Circuit construed paragraph 297 of the Tariff Act of 1894. That Court reached the same conclusions as the Circuit Court of Appeals for the Second Circuit. The importation in that case was Tournay velvet carpet, which, like women's and children's dress goods, was provided for *eo nomine* in the Act of 1894. Two Circuit Courts of Appeals are therefore in accord as to the unsoundness of the Government contention in this case.

## POINTS.

### I.

**The provisions of paragraph 297 have no relation to the article in question here, because it is provided for eo nomine in paragraph 283 as "women's and children's dress goods."**

This point is not referred to in the decisions of the Courts below in this case, it having been apparently deemed unnecessary to refer to it in view of the fact that the goods were composed of worsted, and that the exaction complained of was clearly erroneous on another ground, but it was passed upon in the case of U. S. vs. Field, *supra.*

The principle of law is well settled that where an article is specially provided for in a tariff act, general terms in the same or a subsequent act which would otherwise include it have no application to it.

Arthur vs. Rheims, 96 U. S., 143.
Arthur vs. Lahey, *Id.*, 112.
Worthington vs. Abbott, 124 U. S., 433.
Robertson vs. Salomon, 130 U. S., 412.
Robertson vs. Glendenning, 132 U. S., 158.

The articles in question here are not dutiable as "manufactures of wool," because they are specifically provided for as "women's and children's dress goods." In assessing them under the Tariff Act of 1890 the Collector did not attempt to classify them as manufactures of wool under paragraph 392, but as "women's and children's" dress goods, under paragraph 395. If the article is not dutiable under a provision for manufactures of wool it cannot be covered by a provision postponing the reduction of duty on "manufactures of wool."

The point is well illustrated in the case of Briggs vs. Frick (Taney, 100), where the Court said:

> "The description of the goods which are to pay the woolen duties, and of the goods which are to pay cash duties, are precisely the same. The second clause of the second section of the Act of 1832, among other things, provides that the duty upon 'manufactures of wool, or of which wool shall be a component part,' shall be fifty per cent. *ad valorem;* the fifth section declares that 'except wool, manufactures of wool, or of which wool is a component part,' when the amount of duties exceed two hundred dollars, they are payable at the option of the importer, one-half in three and one-half in six months; and the sixth section provides that *upon 'manufactures of wool, or of which wool is a component part,' the duties shall be paid in cash.* Now, if these goods are not 'manufactures of wool, or of which wool is a component part,' within the meaning of the second clause of the second section above quoted, which regulates the amount of duty, how can they be regarded as manufactures of that description within the meaning of the fifth and sixth sections, above mentioned, which regulate the times of payment? The language of all these clauses of the law evidently describes the same goods. *And if the goods in question are not chargeable with the woolen duties, it follows that the duties upon them are not payable in cash.*"

The Court of Appeals was well within these decisions, therefore, in U. S. vs. Field, *supra*, when it said:

If, therefore, it were conceded that the carpets in question "might, in some respects, be considered a "manufacture of wool," yet, *being subject by this act to a particular duty*, they cannot be so regarded here, and it must be considered that the duty placed upon them took effect upon the passage of the act, *unaffected by paragraph 297, which applied only to manufactures of wool eo nomine.*

And its language is as applicable to worsted dress goods as to Tournay velvet carpets.

## II.

**There is no principle more firmly settled in the construction of the revenue laws than that for tariff purposes wool and worsted are distinct articles, and that manufactures of worsted are not dutiable under provisions for manufactures of wool.**

This principle has been affirmed in the following cases:

Elliott vs. Swartwout, 10 Peters, 137.
Riggs vs. Frick, Taney, 100.
Seeberger vs. Cahn, 137 U. S., 95.
Ballin vs. Magone, 41 Fed. Rep., 921 (writ of error dismissed in Supreme Court).

The first of these decisions was made in 1836, the last in 1890.

The case of Elliott vs. Swartwout arose under the Tariff Act of 1832, and the question was whether worsted shawls with a cotton border were dutiable under a provision for "all other manufactures of wool or of which wool was a component part." The Court said:

> "It being admitted in this case that *worsted is a distinct article*, well known in commerce under that denomination, we must understand Congress as using the term in that commercial sense, and as *contradistinguished from wool*, and woolen goods, and other well-known denominations of goods."

In Seeberger vs. Cahn, this Court (per Mr. Justice GRAY) says:

> "It being distinctly found, as matter of fact, that the goods in question are called or known in the trade as 'worsteds,' and are composed mainly of worsted, but mixed with a small pro-

> portion of shoddy and of cotton, the *Circuit Court rightfully held that they were subject to duty as manufactures of worsted, and not as manufactures of wool.*"

And in Ballin vs. Magone, LACOMBE, J., said :

> " The tariff act itself, however, recognizes a difference between woolen and worsted articles ; between goods composed of worsted and goods composed of wool. We find the words ' wool ' or ' woolen ' and ' worsted ' used in contrast at least six times in this very schedule ; and the examination of successive tariff acts, back to, I think, 1816, shows an unbroken continuance of such contrasting use. It seems plain, therefore, that the words ' woolen cloths ' used in the paragraph on which the defendant relies, are to be taken as including only those woolen cloths which are not worsted, or composed of worsted, within the meaning of those terms (that is, ' worsted,' or ' composed of worsted '), as used in this tariff.
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> " Upon this distinction, then, between the wool which is known to the tariff act as ' wool,' and the wool which is known to the tariff act as ' worsted,' the determination of this case rests."

The decision in Seeberger vs. Cahn was made November 17th, 1890, after the enactment of the tariff act of 1890, and as a result of that decision the Treasury Department on December 31st, 1890, abandoned its appeal from Judge LACOMBE's decision in the Ballin case (see S S. 11,011 in Appendix).

To break the force of these precedents covering one-half a century the appellant suggests that they all related to acts which laid a different rate of duty on worsted and woolen goods, and that the rule they lay down is no longer applicable, because under the later acts the rates of duty are the same.

This is, of course, begging the whole question. The question to be decided in this case is whether the rates of duty are the same. The appellant contends that

they are. We contend they are not. Our contention is that under the tariff act of 1894 the rates were to be the same after January 1st, 1895, but from the date of the passage of the act to January 1st, 1895, they were to be different. Of course, it is no answer to our contention to *assert* that the rates of duty are the same.

Moreover, it is a novel proposition that the distinction between two different articles can be abolished by subjecting them to the same rate of duty. Under the tariff of 1890 manufactures of metal paid 45 per cent. duty; manufactures of cotton 40 per cent. duty; manufactures of glass 60 per cent. duty. Under the tariff of 1894 these articles all pay 35 per cent. duty.

Could it, therefore, be contended that Congress had abolished the distinction between metal, cotton and glass, and that they became the same for tariff purposes then and thereafter.

The true principle is, of course, that, when Congress enumerates two different materials in the same paragraph, and affixes to them the same rate of duty, it recognizes them as different things. Otherwise, one name would do for both. If wool and worsted were the same thing, a provision for manufactures of wool, or other articles composed of wool, would include manufactures or articles composed of worsted. But Congress recognized that the word wool would not cover worsted by enumerating them separately not only in paragraphs 391, 392, 394, 395, 396, 397 and 398 of the Tariff Act of 1890, but in paragraphs 280, 281, 283, 284, 285 and 286 of the Tariff Act of 1894. If the word "wool" was not sufficient to cover "worsted" in each of these seven paragraphs of the Tariff Act of 1894, as Congress evidently considered it was not, why is it sufficient to cover worsted in paragraph 297.

Again, the argument of appellant proves too much. If, by putting the same rate of duty on wool and worsted in various paragraphs, Congress obliterated the distinction between them, so that the word "wool"

in paragraph 297 covered them both, then it must have equally abolished the distinction between wool and the hair of the camel, goat or alpaca, for these substances are also provided for in these same paragraphs at the same rate of duty. Yet, the Attorney-General has held (see Appendix), and the Secretary of the Treasury has followed his ruling, that paragraph 297 does not cover manufactures of these materials.

Not only is the appellant's argument unsound, but the premises on which it is based are not even correct, for, as pointed out by Judge TOWNSEND in his opinion below (fols. 69–71):

> "But the distinction in terminology, as already shown, has been uniformly preserved; and in Ballin vs. Magone (41 Fed., 921), Judge LACOMBE, referring to the provisions of the Act of 1883, says:
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> "'The Tariff Act itself, however, recognizes a difference between woolen and worsted articles; between goods composed of worsted and goods composed of wool. We find the words "wool" or "woolen" and "worsted" *used in contrast at least six times in this very schedule;* and the examination of successive tariff acts, back to, I think, 1816, shows an unbroken continuance of such contrasting use. It seems plain, therefore, that the words "woolen cloths," used in the paragraph on which the defendant relies, are to be taken as including only those woolen cloths which are not worsted, or composed of worsted, within the meaning of those terms (that is, "worsted," or "composed of worsted") as used in this tariff."
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> "*In five of the instances above referred to as illustrations of this distinction, the rates of duty were the same.*"

Not only has the general principle for which we are contending been repeatedly affirmed by the Courts, but there are special reasons connected with the particular Tariff Act now under consideration why it should be followed in the case at bar.

The Act of 1894 is entitled "An Act to reduce taxation, &c." It makes large reductions all through the woolen schedule, including the paragraph relating to women's and children's dress goods. When an exception in favor of higher taxation is incorporated in such a statute it should be strictly construed against the taxing power. Yet the Court is asked to give paragraph 297 a liberal construction repugnant to judicial decisions for sixty years.

Again, we may get some light from the legislative history of the Act of 1894.

Paragraph 297, as it passed the House of Representatives read as follows:

> "297. The reduction of the rates of duty herein provided for manufactures of wool shall take effect December second, eighteen hundred and ninety-four, *and on all rates of duty in the woolen schedule*, except on carpets, there shall be a reduction of one per centum *ad valorem*, to take effect on the first day of July, eighteen hundred and ninety-six, and thereafter of a like amount on the first day of July eighteen hundred and ninety-seven, eighteen hundred and ninety-eight, eighteen hundred and ninety-nine, and nineteen hundred, respectively."
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> See Rec., fols. 41, 68, and Atty. Genl.'s Opinion in Appendix.

The date December 2, 1894, was subsequently changed to January 1st, 1895, and the remainder of the paragraph stricken out. So that Congress had clearly in mind the distinction between the expression "manufactures of wool," and the expression "on all rates of duty in the woolen schedule," and with deliberation and forethought retained the one and discarded the other, yet the Court is now asked to give the expression "manufactures of wool" the same meaning as the expression "all rates of duty in the woolen schedule," notwithstanding repeated adjudications of this Court that they will not bear that interpretation.

Failing to find any justification for the exaction complained of in the language of the statute, counsel for the Government ask this Court to seek and find an intent not disclosed by the language for the purpose of sustaining the higher duty. The language of the statute is not ambiguous and there is no reason why this Court should search for an undisclosed intent. The case is within the principle laid down by this Court in a recent case as follows:

> "In our judgment the language used is so plain and unambiguous that a refusal to recognize its natural, obvious meaning would be justly regarded as indicating a purpose to change the law by judicial action based upon some supposed policy of Congress. But, as declared in Hadden vs. Collector, 5 Wall., 107, 111, '*what is termed the policy of the government with reference to any particular legislation is generally a very uncertain thing*, upon which all sorts of opinions, each variant from the other, may be formed by different persons. *It is a ground much too unstable upon which to rest the judgment of the court in the interpretation of statutes.*' 'Where the language of the act is explicit,' this court has said, 'there is great danger in departing from the words used, to give an effect to the law which may be supposed to have been designed by the legislature. * * * It is not for the court to say, where the language of the statute is clear, that it shall be so construed as to embrace cases, because no good reason can be assigned why they were excluded from its provisions' (Scott vs. Reid, 10 Pet., 524, 527)."
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> Bate Refrigerating Co. vs. Sulzberger, 157 U. S., 1.

The same principle is laid down with reference to the revenue laws in the recent decision of this Court in the case of U. S. vs. Goldenberg (18 Supr. Ct. Rep. 28). Following is an extract from the opinion of Mr. Justice BREWER:

> "It is true there are cases in which the letter of the statute is not deemed controlling, but the cases are few and exceptional, and only arise when there are cogent reasons for believing that the letter does not fully and accurately disclose the intent. No mere omission, no mere failure to provide for contingences which it may seem wise to have specially provided for justify any judicial addition to the language of the statute, * * * Certainly, there is nothing which imperatively requires the Court to supply an omission in the statute or to hold that Congress must have intended to do that which it has failed to do."

In support of the claim that Congress intended the words "manufactures of wool" in paragraph 297 to apply to all manufactures of the hair of the sheep, whether wool or worsted, and whether specially provided for in the schedule or not, the assertion is made that in August, 1894, manufacturers of woolen and worsted goods in this country had a surplus stock on hand, manufactured from wool upon which duty had been paid, and which it would have been unfair to them to put in competition with imported goods upon which no compensatory wool duties had been paid, and that it was the intent of Congress to allow these manufacturers a period of four months within which to dispose of this surplus stock without such injurious competition. Of the facts thus assumed, there is not a syllable of proof in this record. In the application to this Court for a writ of *certiorari* it was suggested that they were facts generally known, and of which this Court was entitled to take judicial knowledge. It would be difficult to conceive of a wider stretch of the doctrine of judicial notice than this. If this Court can take judicial cognizance of the condition of the woolen and worsted manufacturing industry in the summer of 1894, and of the fact that manufacturers had a stock of surplus goods on their hands, it is difficult to conceive of any alleged fact of which it could not take judicial notice.

The Attorney-General held that the new rates of duty on goods manufactured from hair went into immediate operation. Did he take judicial notice of the fact that the manufacturers of hair goods *did not* have a stock of surplus goods? If this Court can be asked to stretch the word woolen so as to make it include worsted upon any such theory of judicial notice, why could not and did not the Attorney-General stretch it so as to include hair? If the Court will examine his opinion (printed in our appendix) it will see that all the authorities to which he refers as establishing a restricted meaning of the term wool were cases which held that the term wool did not include worsted. In fact, it is impossible to read his opinion without arriving at the conclusion that had the question submitted to him been whether the term wool included either worsted or hair, he would have had to reply that it included neither, or else have left out all the reasons given for his conclusion, for every one of those reasons applies with as much force to worsted goods as hair goods.

## III.

**The Act of May 9th, 1890** (26 U. S. Stat. at Large, p. 205) **was repealed by paragraph 392 of the Tariff Act of 1890, and has not been in force since that time.**

The contention of the counsel for the appellant is that one statute will be held to repeal another only when the two are inconsistent. This is not the law. On the contrary, nothing is better settled than that a later statute may repeal an earlier statute though there is no inconsistency between them whatever. If the later statute covers the entire subject matter of the

earlier, and is clearly intended as a substitute for it, the earlier statute will be held to have been repealed.

The rule is thus stated in the case of King vs. Cornell, 106 U. S., 395, by the late Chief-Justice WAITE :

> " While repeals by implication are not favored, it is well settled that where two acts are not in all respects repugnant, *if the later act covers the whole subject of the earlier*, and embraces new provisions which plainly show that it was intended as a substitute for the first, it will operate as a repeal."
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> See, also,
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> U. S. vs. Tynen, 11 Wall., 88.
> W. S. vs. Claflin, 97 U. S., 546.
> Norris vs. Crocker, 13 How., 429.
> Tracy vs. Tuffly, 134 U. S., 206.

And this Court has very recently held that a provision for drawback on bituminous coal in the Tariff Act of 1883 was repealed by the Tariff Act of 1890, on the ground that " the Act of 1883 was clearly superseded in all its parts, and intended so to be, by the latter act."

U. S. vs. Allen, 163 U. S., 499.

The Attorney-General himself held (20 Op. Att.-Gen., 630) that Section 7 of the Act of February 8, 1875, relating to the free entry of foreign bags exported filled and returned empty, was repealed by the Tariff Act of 1890, and his opinion has been sustained by the Courts.

Kent vs. U. S., 38 U. S. App., 554.

Applying these principles to the statute in question we find that the Act of May 9th, 1890, corrected an inequality in the Act of 1883, by providing that worsted cloths should be classified as woolen cloths. When the Act of October 1st, 1890 was passed, paragraph 392 provided uniform duties for " woolen or worsted cloths."

Thus by the Act of October 1st, 1890 the entire subject matter of the classification of woolen and worsted cloths was disposed of, the Act of May 9th, 1890 was left without anything to apply to, and passed out of existence according to the doctrine of statutory repeals illustrated by the cases above cited.

It is sought to overcome the effect of the decisions above cited by raising the contention that the Act of May 9th, 1890 was not a tariff act, imposing duties, but a statute laying down a rule of classification and was therefore not intended to be superseded and was not, in fact, superseded by the Tariff Act of 1890. This contention necessitates a review of the history of the enactment of the Act of May 9th, 1890 and of the interpretation put upon it by this Court.

On the 23d day of May, 1889, the Secretary of the Treasury (Mr. Windom) promulgated a decision (S. S. 9400), holding that worsted cloths known as "diagonal worsteds" were dutiable, not as they had been theretofore classified under paragraph 363 of the Tariff Act of 1883, as "manufactures or worsted," but as "woolen cloths," under paragraph 362 of the same act. Importers immediately protested, and the suit of Ballin vs. Magone was brought to trial, in the United States Circuit Court for the Southern District of New York, in April, 1890. The charge of Judge LACOMBE followed the line of decisions cited under Point I. about wool and worsted, and the jury found a verdict for the plaintiff. The Goverdment appealed.

The Fifty-first Congress was then in session. A general revision of the tariff was about to be made. The McKinley Tariff Bill was reported from the Ways and Means Committee April 16th, 1890, six days before the Committee reported the Dingley Bill and 23 days before the passage of that Bill (see Cong. Rec., Vol. 21, Part 4, p. 3443). But it was deemed imperative to make immediate provision for this class of merchandise by special enactment, without waiting for a general tariff revision. The object of the law and reasons for haste

will be found fully stated in the report of the Committee on Ways and Means on the bill, a copy of which we have printed in the appendix.

No sooner had the act been put in operation than protests were filed against the assessment of duties under it, not only on the ground of its unconstitutionality, but on the further ground thus stated in the protest (as appears in record in case of U. S. vs. Ballin, 144 U. S., 1):

> "That even if the act was in force as a valid law in July, 1890, when these importations were made, *its language could not be construed to amend the clauses of the Tariff Act of March 3, 1883*, above referred to, because the Act of May 9, 1890, *did not purport to repeal any act imposing the pre-existing rate of duty on worsted cloths, or to impose any new duty thereon*; and because, whether or not the Secretary of the Treasury classified the goods in suit as woolen cloths, this did not alter the fact that they were manufactures of worsted and dutiable accordingly under the Act of 1883."

The Board of General Appraisers having overruled these protests, the case of Ballin vs. U. S. was brought to trial before Judge LACOMBE and decided in favor of the importers on grounds fully stated in the opinion of the Court, which is to be found in 45 Fed. Rep., 170, and from which the following is an extract:

> "*There is nothing on the face of this act indicating that it is intended to repeal or in any way alter any act imposing customs duties.* It is contended that, in the existing state of affairs when this act was passed, in the former statute, in the decisions of the courts and in the debates of Congress, we may find sufficient to warrant the conclusion that *it was the intention of Congress, by the passage of this act, to deal with the question of the duty to be laid upon goods such as are imported here*, and to change their status so as to lay upon them a higher rate. Conceding that, for the purposes of the argument only (and it is

only for the purposes of this argument that I am prepared to concede that proposition), let us see with what machinery they undertake to carry out that intent."

The United States appealed from this decision to this Court. The briefs filed on the appeal are matters of record here, and copies of them are now before us. The Attorney-General contended that the Dingley Act was a tariff law amendatory of the Tariff Act of 1883. Here are a few extracts from his brief:

> "*The Act of May 9, 1890, is, therefore, an implied amendment to the Act of 1883 and the worsted clause thereof* to the extent of imposing the same duty upon imported worsted cloths as upon woolen cloths (p. 8)."
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> "The more clearly the learned Judge of the Circuit Court and the counsel for the importers show the inconsistency of the Act of May 9, 1890, with the Act of 1883, *the clearer becomes the intention of Congress to amend the Act of 1883*, and the clearer becomes the duty of the Court to carry out that intention" (p. 42).
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> "It follows that the Act of May 9, 1890, is to be construed as if it read '*hereafter the Act of March 3, 1883, is to be so construed* that the term woolen cloths shall be held to include worsted clothes for purposes of classification for duty'" (p. 46).
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> "It follows that *the effect of the Act of May 9, 1890, was to impose upon worsted cloths made of wool valued at less than 80 cents a pound, 35 cents per pound and 35 per cent. ad valorem*, and that the action of the Collector was correct" (p. 49).

On the other hand counsel for the importers contended on the argument, as he had in his protest, that the Dingley Act was not a tariff law, and did not affect the rate of duty on worsted cloths. Great stress was laid upon the fact that during the debate on the bill in Committee of the Whole in the House of Representatives the Chairman had ruled amendments about

rates of duty out of order as not germane to the bill, and that Speaker Reed had made the same rulings. We quote some passages from the brief of counsel for the importers:

> " In other words, *it is begging the question for the Solicitor-General to assume this act to be a tariff law*, and, upon such unfounded assumption, ask to have it construed accordingly. It must first be made to appear, from the act itself, that it is a tax law, before any such alleged purpose of its enactment can be considered in its construction " (p. 27).
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> " Our claim, that *this bill could not have been intended to affect the duty upon worsteds*, fortified, as it is, by the public declaration of its sponsor and the Speaker's ruling, is further sustained by the consideration that, so construed, it violates those principles of tariff construction which this Court has repeatedly declared to be fundamental--*i. e.*, that, primarily, the commercial, and, secondarily, the common, designation is to determine the application of tariff laws " (p. 34).
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> " It is a further presentation of the latter idea to add that, even had the Secretary actually ' classified ' our importations as woolens, *no then existing statute would, as a consequence of such classification, have affected them with the woolen duty* " (p. 35).
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> " *To construe this bill as increasing duties upon worsteds works flagrant injustice*, since no time is allowed those merchants who had sold such goods ' to arrive,' or to be manufactured to order and delivered under special contracts to bring in such goods under the rate in contemplation of which such contracts were made. There was no reason to imagine *these articles would be affected by any special legislation, particularly in view of the general tariff bill then pending in Congress* " (p. 37).
>
> " If the phraseology of this act does not clearly indicate its applicability to any subject of legislation ; *if it does not expressly and inevitably impose a new duty upon worsted cloths* (in a certain contingency), then the old duty attached to such

importations by the Act of 1883 is the only one assessable thereon" (p. 40).

Having before it this opinion of Judge LACOMBE and these arguments of counsel for the respective parties, this Court reversed the decision of Judge LACOMBE and used the following language (U. S. vs. Rallin, 144 U. S., 1), speaking through Mr. Justice BREWER:

> "It was an act suggested by the contest then pending in the Courts, and which was finally decided adversely to the Government in the case of Seeberger vs. Cahn, 137 U. S., 95, in which it was held by this Court that 'cloths popularly known as "diagonals" and known in trade as "worsteds," and composed mainly of worsted, but with a small proportion of shoddy and of cotton, are subject to duty as a manufacture of worsted, and not as a manufacture of wool, under the Act of March 3, 1883, C. 121.' The form of expression used in the act may be novel, but the intent of Congress is quite clear. Recognizing the fact that the Secretary of the Treasury is head of the financial department of the Government, that to him, as its chief administrative official, is given *the supervision of the tariff and all the collections thereunder*, it directs him to classify all worsted cloths as woolen cloths, and it gives to him no discretion. He may not classify some worsteds as woolens and others as not. There is given no choice or selection, but it is the imperative direction of Congress to him, as the *chief administrative officer in the collection of duties*, to place all worsted cloths, by whatever name properly known or known to the trade, within the category of woolen cloths; and, of course, if placed within that category, or, using the familiar language of the tariff, if 'classified as woolen cloths, *subject to the duty imposed on such cloths.* If action were necessary by the Secretary of the Treasury to put this act into force, which was not as we think, such action was taken by the circular letter of May 13, 1890, from the Treasury Department to all Custom Officers

publishing the act for the information and guidance of the public.

"Our conclusion, therefore, is that the act was legally passed, and that *by its own terms and irrespective of any action by the Secretary of the Treasury, the duties on worsted cloths were to be such as were placed by the Act of 1883 on woolen cloths.*"

In view of this history of the origin and construction of the Dingley Act, can there be any question that it was a tariff law, laying duties on imported merchandise, and as such under the rulings of this Court, superseded and repealed by the Tariff Act of October, 1890.

## IV.

**Even if the Act of May 9th, 1890, was still in force, it would have no application whatever to the merchandise in controversy, and no relevancy whatever to the case at bar.**

The Act says nothing about worsteds or wool as such, or about women's and children's dress goods. It says:

"That the Secretary of the Treasury be, and he hereby is, authorized and directed to classify as *woolen cloths* all imports of *worsted cloth*, whether known under the name of worsted cloth or under the name of worsteds, diagonals or otherwise."

And this Court said of it *(supra)*:

"Our conclusion, therefore, is that the act was legally passed, and that by its own terms,

> and irrespective of any action by the Secretary of the Treasury, the duties on worsted cloths were to be such as were placed by the Act of 1883 *on woolen cloths.*"

Now, the Act of 1883 provided for woolen cloths *eo nomine*, and imposed upon them certain specific duties *per pound* and certain *ad valorem* duties. The Act of May 9th, 1890, provided that worsted *cloths* should pay the duties *thus imposed on woolen cloths.*

The same act provided (paragraph 365) *eo nomine* for "women's and children's dress-goods composed of wool or worsted," and imposed upon them certain specific duties per *square yard* and certain duties *ad valorem.* Dress-goods paid the same duties whether composed of wool or worsted, under the Tariff Act of 1883, for nearly seven years before the Act of May 9th, 1890, was passed. That act could have no application to them, and did not purport to have any. It provided for worsted cloths, and made them pay the duty *imposed on woolen cloths under that name.* The term cloths, whatever might be its broad popular meaning, had a statutory meaning in the Act of 1883 and the Dingley Act *which excluded women's and children's dress-goods.* Its tariff and commercial meaning was thus defined by Secretary Windom in the decision (S. S. 9400) which occasioned the litigation leading to the enactment of the Dingley bill.

> "The term 'cloths' has a technical and restricted signification, and can properly be only applied to the *thicker and heavier fabrics of wool*, which are so finished and close as to be adapted for use by the *tailor* or *clothier* in the manufacture of *garments for men and boys.*"

The same definition was followed by the Department after the passage of the Act of May 9th, 1890. In S. S. 10,078, dated June 20, 1890, which we print in the appendix to this brief, the Secretary held that worsted portieres or hangings were not covered by the Dingley Act,

and, in May, 1891, the Board of General Appraisers again adopted the definition, and said (in S. S. 11,218, which will also be found in the appendix), that worsted moreens imported July 21, 1890, were "*of the nature of dress goods rather than cloth*," and were not dutiable under the Act of May 9th, 1890.

The absurdity of the contention here made will be further apparent on examination of the provisions of the Tariff Act of 1890.

Paragraph 392 of that act provided a sliding scale of mixed duties *(pound* and *ad valorem)* according to value per pound on "woolen or worsted goods," ranging from 33 cents *per pound* and 40 per cent. *ad valorem* to 44 cents *per pound* and 50 per cent. *ad valorem*. Paragraph 395 provided for "women's and children's dress goods composed wholly or in part of wool or worsted" a duty of 12 cents per *square yard* and 50 per cent. *ad valorem*. If the Act of May 9th, 1890, was in force and applicable to such goods, this provision would be nugatory and the goods assessed with *pound* and *ad valorem* duties as "woolen cloths" under paragraph 392, and yet we find in paragraph 395 a proviso *which limits the dress goods that shall pay a pound duty to those which weigh over four ounces per square yard*; flannels (which are certainly as much cloth as dress goods) are provided for in paragraph 393, and it is provided that, when they are valued at over 50 cents per pound, they shall pay the same duty as woman's and children's dress goods. Yet, upon the theory now set up as to the Act of May 9th, 1890, they should pay the duty provided in paragraph 392 for "woolen cloths."

In the case at bar the Collector held paragraph 297 of the present tariff act to apply to dress goods, and assessed them under the Act of 1890 at a duty of 12 cents per *square yard* and 50 per cent. *ad valorem*. Yet, if the Act of May 9th, 1890, was in force, it was his duty to assess them at 44 per cent *per pound* and 50 per cent. *ad valorem*. Probably no one would be more surprised than the Collector at the suggestion

that, with a provision in front of him for dress goods, he should assess dress goods under another provision for " woolen cloths."

Upon what theory would a taxing officer who was commanded by law to classify certain articles as " woolen cloths " pass by a provision for woolen cloths *eo nomine* in the tariff act, and assess the articles under some other paragraph.

## V.

## The Solicitor General's Brief.

We have just received (Wednesday, December 15th) the Solicitor-General's brief, and, although we think the points in it are covered in preceding portions of this brief, a few suggestions in reply may not be out of place.

The suggestion that worsted is a manufacture of wool, and that in early tariff acts expressions are to be found which would seem to recognize it as such, is sufficiently met by the fact that whenever the question came before the courts (in cases heretofore cited) it was decided that the provisions for the manufactures of wool did not cover worsted goods or manufactures of worsted. The acts under consideration (those of 1890 and 1894) certainly did not recognize worsted as a manufacture of wool (any more than they did hair) when they provided over and over again for manufactures or goods composed of wool, worsted, the hair of the camel, goat, alpaca or other animals. This Court is not asked to create a distinction which the law has not recognized. It is the Government which asks it to obliterate a distinction which the laws and the Courts have recognized.

Much of the Solicitor-General's brief is devoted to proceedings in Congress, of which this Court is asked to take notice, and upon which it is asked to give a different construction to the phrase " manufactures of wool " from that which it had repeatedly laid down in its own decisions. It seems a little strange that the Court should be asked to have recourse to all this investigation of proceedings in Congress to enlighten it on the meaning of a term which it has repeatedly construed, while it seems never to have occurred to the law officers of the Government that Congress might be expected to take any notice of the decisions of this Court (which had been repeatedly referred to in its own debates), and be presumed to use words charged with the meaning which this Court had repeatedly given to them. In all these cases there is a strenuous plea for judicial cognizance. How would it do to assume a little Congressional cognizance? If the words to be interpreted were novel and had never before come before the Courts, the invitation to explore the Congressional Record might be excusable. But when the words to be interpreted have been repeatedly interpreted by the Supreme Court, we submit it is asking a good deal to invite this Court to search through committee reports and speeches of members to see whether it cannot find ground for holding that Congress had ignored its previous decisions, and had used language without the slightest reference to such decisions. When we come to examine these debates we find a pathetic plea by the Solicitor-General for the farmer's spring clip. The speech of Mr. Wilson referred to was made on January 17th, 1894, and the bill did not ultimately go into effect until the 28th of August. Which spring clip is the Solicitor-General so solicitous about? If it was the spring clip of 1894 it would seem that might all have been disposed of before August 28th, and if it was the spring clip of 1895 that could not be saved for the reduction was to take effect on Jan-

uary 1st, 1895. The provision postponing the reduction on all duties in the woolen schedule was stricken out by the Senate before it sent the bill back to the House on July 6, 1894. If the saving of the spring clip was the reason for postponing all the reductions in the woolen schedule in January, the insured safety of the spring clip may have been the reason for striking out the postponement as to all rates in the woolen schedule in July. These are all matters of speculation, and we respectfully submit within the decisions in Bate vs. Sulzberger and U. S. vs. Goldenberg, which we have cited, very slender and unsafe foundations on which to base the construction of any statute, much less reverse an interpretation of particular language repeatedly laid down by this Court.

The Solicitor-General insists that the language to be interpreted here is not language of commercial designation. We are not asking to have it interpreted in the light of commercial designation. We are asking to have it interpreted in the light of a distinction made by Congress in all previous tariff acts in the tariff provision to be now construed and repeatedly recognized by this Court. If to urge that this should be done is to be denounced as being technical we must plead guilty, because we choose to assume, what the Solicitor-General chooses to ignore, that Congress knew of the technicality and legislated with reference to it.

The Solicitor-General says that, in all paragraphs in which the words wool and worsted are both used, the word worsted is used not for contrast but for inclusion, out of abundant caution. Why is not the same thing true of goat hair and camel's hair? These substances were expressly defined in the Act of 1890 as constituting a part of class 2, combing wool, and all the provisions on manufactured goods mentioned them as well as worsted. If manufactures of wool in paragraph 297 is broad enough to include worsted, why is it not broad enough to include hair? Yet, upon the Attorney-General's opinion that the word wool was used in

a restricted sense, enormous sums of money on goods imported between August and January composed of hair were remitted as duties.

In the publication relating to the production and consumption of wools and manufactures of wool referred to in the Solicitor-General's brief, it will be found that hair goods as well as worsted goods were included.

We find that the Solicitor-General does not endorse the view of the statute taken by the Board of General Appraisers when they held that paragraph 297 covered everything provided for in Schedule K. He could not do so without repudiating the opinion of his department printed in appendix. We have therefore refrained from arguing in refutation of this theory, as it would seem obvious that arguments to refute the proposition that the words "manufactures of wool" were equivalent to goods provided for in Schedule K, when that schedule provides for other goods besides wool goods, were unnecessary.

## VI.

**The judgment of the Circuit Court of Appeals for the Second Circuit should be affirmed.**

Dated New York, December 14th, 1897.

CHARLES CURIE,
Attorney for Appellees.

W. WICKHAM SMITH,
Counsel.

# APPENDIX.

## (1) Opinion of Attorney-General on Par. 297.

WOOL AND WOOLEN GOODS.

(Telegram.)

TREASURY DEPARTMENT,
October 9, 1894.

Attorney-General has rendered opinion that the word "wool," as used in paragraph 297 of the new tariff act, refers to hair of sheep only, and that the new duties, under Schedule "K," upon articles made of the hair of other animals went immediately into effect from the date the act took effect. *Customs Officers will be governed accordingly.* Instructions of August 27 remain unchanged. *Collectors will reliquidate all entries covering goods classified contrary to above instructions.*

J. G. CARLISLE,
Secretary.

(6488 g.)

COLLECTOR OF CUSTOMS, New York.

DEPARTMENT OF JUSTICE,
WASHINGTON, D. C., October 9, 1894.

SIR—The new rates of import duties prescribed by Section 1 of the tariff act of August 28, 1894, went into effect immediately, "unless otherwise specially provided for." Paragraph 297 of that act provided that: "The reduction of the rates of duty herein provided for manufactures of wool shall take effect January 1, 1895." That paragraph closes Schedule "K" of the Act, whose heading is "Wool and manufactures of wool." The schedule does not, however, deal with wool and manufactures of wool alone. It distinguishes repeat-

edly between "wool, worsted, the hair of the camel, goat, alpaca or other animals." It includes also certain manufactures of flax and cotton.

You ask my opinion whether paragraph 297 refers solely to merchandise of which wool, the product of the sheep, forms the material, or whether the product of the camel, goat, alpaca or other animals is equally included.

The general intent of the act was to effect an immediate, as well as extensive, reduction of duties. To postpone the reduction in the case of any specific article, the article must be brought clearly within some exception to this general intent. *All doubts arising under the act are presumptively to be resolved in favor of the lower rate of duty*, save where the act mentions or describes the same article in two different places, under two different rates, when the higher rate governs.

"Wool," within dictionary definitions, includes the hair of the alpaca and of the Angora goat; it never is used to include all goat's hair, nor yet camel's hair, nor cow hair or horse hair. Throughout Schedule "K," except in the heading, it is undoubtedly used so as to exclude even hair of the kinds first mentioned. *Moreover, the phrase "manufactures of wool" has been given a very restrictive meaning in prior tariff acts* (Elliott vs. Swartwout, 10 Peters, 137; Seeberger vs. Cahn, 137 U. S., 95), and there is a presumption in the absence of anything to the contrary that Congress intended it still to have the same signification (Maddock vs. Magone, 152 U. S., 368, 371, 372).

If the heading of Schedule "K" were intended as an accurate and comprehensive description of its contents, the question would arise whether the heading or the contents should control, and it might be argued that hair, flax and cotton were all wool. But the heading has little significance. It is intended only for a general suggestion as to the character of the articles within the schedule (Hollender vs. Magone, 149 U. S., 586, 591; Seeberger vs. Schlesinger, 152 U. S., 581,

583). If the rule of construction were otherwise, then sponges would be either "chemicals, oils or paints," and cork would be either "flax, hemp or jute."

Moreover, it is proper to consider, as an aid to construction, the original form of the bill and the changes made by amendment. The bill, as it first passed the House of Representatives, in the same paragraph with the exception above quoted concerning "manufactures of wool," had further provisions as to "all rates of duty in the woolen schedule." The latter was stricken out in the Senate, but serves to show *that the distinction was brought to the attention of Congress.*

I am, therefore, very clearly of the opinion that the word "wool," as used in paragraph 297, refers to hair of the sheep only, and that the new duties upon articles made of the hair of other animals went immediately into effect upon the passage of the act.

You also ask my opinion whether the phrase "manufactures of wool," in that paragraph, is applicable to articles of which wool, as so defined, although a component material, is not the material of chief value. I would answer this question in the negative (Arthur v. Butterfield, 125 U. S., 70, 75; Herrman v. Robertson, 152 U. S., 521, 524).

Very respectfully,

LAWRENCE MAXWELL, JR.,
Acting Attorney-General.

TO THE SECRETARY OF THE TREASURY.

## (2) Department Acquiescence in Judge Lacombe's Decision in Ballin vs. Magone.

REFUNDS ON WORSTED CLOTHS.

TREASURY DEPARTMENT, April 29, 1891.

SIR—The Department is in receipt of your letter of the 14th instant, in which you request to be informed

whether the Department has acquiesced in the decision of the Court in regard to the classification of worsted cloths, and whether it has authorized a refund of duties paid in excess on such merchandise.

In reply, I have to state that, on the 31st of December last, the Department addressed a letter to the collector of customs at New York (a copy of which is herewith enclosed), authorizing him, under the mandate of the Supreme Court in the case of Magone vs. Julius Ballin *et al.*, and on due entry of judgment to take the necessary steps for its settlement, and also to take steps for the settlement of other similar suits now pending, where the requirements of law as to protest, appeal, institution of suit, etc., have been fully complied with.

Respectfully yours,

O. L. SPAULDING,
Assistant Secretary.

(6682 v.)
COLLECTOR OF CUSTOMS, Providence, R. I.

(Letter above referred to.)

TREASURY DEPARTMENT, December 31, 1890.

SIR—The Department is in receipt of a letter from the Attorney-General, dated the 26th instant, in which he states that, in view of the decision of the United States Supreme Court in the case of Anthony F. Seeberger, collector, etc., v. Bernard Cahn *et al.*, which held that "though worsted is doubtless a product of wool, and might in some aspects, be considered a manufacture of wool, yet, *manufactures of worsted being subjected by the second paragraph (T. I., 363) to different duties from those imposed by the first paragraph (T. I., 362) on manufactures of wool, it necessarily follows that a manufacture of worsted cannot be considered as a manufacture of wool within the meaning of this statute*" (act of March 3, 1883), the writ of

error in the case of Daniel Magone, collector, etc., vs. Julius Ballin *et al.*, involving the question as to the classification of worsted diagonals, suitings, coatings, etc. (Synopsis 9400), cannot be sustained, and will be dismissed, inasmuch as the jury found in said case that the merchandise was exclusively of worsted.

You are therefore authorized, on due entry of judgment in said suit in the circuit court under the mandate of the Supreme Court, to take the necessary steps for its settlement, and also to take the same steps with reference to all other similar suits now pending, where the requirements of law as to protest, appeal, institution of suit, etc., have been fully complied with.

This decision will apply only to importations of worsted cloths made prior to the passage of the act of May 9, 1890 (Synopsis 10,020).

Respecfully yours,

WILLIAM WINDOM,

Secretary.

COLLECTOR OF CUSTOMS, New York.

## (3) Report of Ways and Means Committee on Dingley Bill.

House of Representatives, Fifty-first Congress ; first session ; Report No. 1664.

CLASSIFICATION OF WORSTED CLOTHS AS WOOLENS.

(April 22, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.)

Mr. Dingley, from the Committee on Ways and Means, submitted the following report (to accompany H. R. 9548) :

The Committee on Ways and Means, to whom was referred the bill (H. R. 9548) providing for the classifi-

cation of worsted cloths as woolens, report the same back with a favorable recommendation.

The bill is made necessary in order to prevent a grave injustice being done to *manufacturers of worsted cloths* in the United States and to the Treasury by the classification of these goods under a paragraph of the present tariff law which imposes upon them a much lower and inadequate compensatory duty than is given woolen cloths, when as a matter of fact worsted cloths are not only made of clothing wool, but also as now made take the place of *fabrics known as woolen cloths.*

Under the tariff act of 1883, *woolen cloth was given a specific duty of 35 cents per pound* to compensate the American manufacturer for the duties on wool. Another paragraph of the same act provided a lower compensatory duty of from 10 to 24 cents per pound on flannels, blankets and manufactures of worsted valued less than 80 cents per pound, and 35 cents per pound on all such goods valued over 80 cents. These lower compensatory duties were intended for coarse, cheap, unfinished goods, not composed entirely of wool, like flannels, blankets and stuff goods, and *were not intended for any finished goods like cloths for men's wear.* Inasmuch as worsted cloths at that time were all, or nearly all, valued at more than 80 cents per pound, and would be subject to 35 cents per pound, specific duty, the attention of the manufacturers was not attracted to the danger lurking in the words " manufactures of worsted." It is clear that Congress intended to impose the uniform specific pound duty of 35 cents on all cloth made of wool ; as worsted cloth is made of the same wool, costs substantially the same, and is used for the same purposes as woolen cloth. But immediately after the passage of the act of 1883, imports of worsted cloth under the pound duties, intended for flannels and blankets, began to come in ; not, however, without continued protest from domestic manufacturers.

Thus, for several years our tariff, as administered, presented the anomaly of giving the manufacturer a

duty of 35 cents per pound on cloth made of carded wool as a compensation for the wool duty, while it gave to the manufacturer of worsteds valued less than 80 cents per pound a compensatory duty of only 10 to 24 cents, or, on the average, only half the wool duty, which was a manifest discrimination against our worsted manufacturers that began to seriously injure our own woolen manufacturing industry by giving foreign manufacturers a great advantage. So serious had this discrimination become that Secretary Fairchild called the attention of Congress to the necessity of legislation to correct it. A bill identical with the bill reported by your committee was presented to the House and referred to the Committee on Ways and Means at the first session of the Fiftieth Congress, and the provisions of that bill were included in the tariff bill reported at that session.

Subsequently the worsted manufacturers of the country presented their grievances to Secretary Windom, and pointed out that it was the intention of Congress to give a specific duty of 35 cents per pound as compensatory for the duty on wool to the wool manufacturer, and in view of the arguments made the Secretary *made a ruling May 23, 1889, classifying worsted cloths as woolen cloths.* Since that time worsted cloths have been so classified. The importers, however, appealed to the Courts, and a jury, under the instructions of the presiding judge of the United States district court for the southern district of New York, has found against the Government. The Secretary of the Treasury will carry the case to the United States Supreme Court, and until his order classifying worsteds as woolens shall be reversed by the court of last resort, the same duties will be collected on both classes of goods.

In this situation the importers, believing that they will ultimately prevail, are preparing to increase their orders for foreign worsteds and bring them in **before any general tariff legislation can**

**be framed and take effect,** in the expectation that they will be able ultimately to obtain a refund of all specific duties imposed upon them in excess of 10 to 24 cents per pound. Therefore, unless there shall be prompt legislation to correct the injustice done the worsted manufacturers, not only will they suffer by successive importations, but the Treasury may be called upon to refund many millions of dollars collected as duties on imported worsteds, all of which will go to increase the profits of the importers who will first take care to collect of their customers the duties paid.

The question presented by this bill is one which does not affect the points in dispute between political parties in regard to tariff legislation, *for whatever duties may be imposed on imports of manufactures of wool*, goods known as worsted cloths and the goods known as woolen cloths, both manufactured of wool and both used for the same purpose, should be subject to the same duties, and especially should this be the case with the specific duties which are simply the equivalents of the duties imposed by the law upon the wool of which they are made.

Your committee, therefore, believe that justice, as well as a due regard for the interests of the Treasury, require the passage of the accompanying bill.

## (4) Department Decision that Worsted Portieres were not Covered by Dingley Act.

TREASURY DEPARTMENT, June 20, 1890.

SIR—The Department is in receipt of your letter of the 12th instant reporting on the communication of W. & J. Sloane, dated the 5th *idem*, relative to the action of the appraiser at your port in returning certain "manufactures of combed wool (or worsted) and cotton," and known commercially as "portieres" or

"hangings," imported by Messrs. Sloane, as dutiable under T. I. 362, by reason of the act of May 9, 1890 (see Synopsis 10,020).

You state that the entry has not yet been liquidated, and express the opinion that the act cited by the appraiser applies to worsted cloths that assimilate to the woolen cloths referred to in T. I. 362 in quality, texture and uses, and that said act does not repeal and make void the provision of T. I. 363 for "worsted" fabrics that are not cloths nor used for the same purposes as the woolen cloths covered by paragraph T. I. 362.

The department concurs in this view, which accords with the view expressed in its decision of May 27, 1889 (Synopsis 9,400, page 226), wherein it is stated that *the term "cloths" has a technical and restricted signification, and can properly be only applied to the thicker and heavier fabrics of wool, which are so finished and close as to be adapted for use by the tailor or clothier in the manufacture of garments for men and boys.*

Respectfully yours,
GEORGE C. TICHENOR,
Assistant Secretary.

(4845*f*).

COLLECTOR OF CUSTOMS, New York.

## (5) Board of Appraisers' Decision that Worsted Moreens (Dress Goods) were not Covered by Dingley Act.

BEFORE THE U. S. GENERAL APPRAISERS AT NEW YORK, MAY 8, 1891.

In the matter of the protest, 761–A, of the H. B. CLAFLIN CO, against the decision of the COLLECTOR OF CUSTOMS AT NEW YORK, as to the rate and amount of duties chargeable on certain moreens imported per City of Richmond, July 21st, 1890.

OPINION BY SHARRETTS, GENERAL APPRAISER.

The evidence in this case tends to show that the merchandise in question is a worsted fabric popularly known as "Moreen." It is used for covering pew cushions and for upholstering purposes generally, also in making ladies' skirts, Duty was assessed upon it at thirty-five cents per pound and thirty-five per cent. *ad valorem*, under T. I. 362 (Act March 3, 1883, as a manufacture of wool, valued at not exceeding eighty cents per pound. The appellants claim that the goods are dutiable at 18 cents per pound, and 35% *ad valorem* under the provision in T. I. 363, for manufactures of worsted not specially provided for, valued at above 40 cents per pound and not exceeding 60 cents per pound. From an inspection of the official samples we find that the merchandise is a coarse fabric, twenty-four inches in width, composed of so-called "worsted" in the warp and weft, the one surface being glossy and smooth, and the other finished to resemble in appearance and to the touch mohair or poplin with a worsted design.

The analytical chemist in charge of the United States laboratory at this port reported that the merchandise

was composed of combed wool known as " worsted," and the testimony of experts who were called before us was to the effect that *it is not what is commonly or commercially known as worsted cloth, but is commonly known in the trade as worsted "moreen", and it partakes of the nature of dress goods rather than cloth.* We so find the facts, and hold that *the article is not covered by the act of May 9, 1890,* but is dutiable under T. I. 363, as claimed by the appellants. This ruling is in harmony with the decision of the Treasury Department in Synopsis 10,078.